

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

2006 FEB -9 A 11: 03

JAMES O. STRUTHERS, Indi-
vidually, and as Administrator of the
Estate of ALICIA STRUTHERS,
deceased,

Plaintiff,

v.

MERCK & CO., INC., a foreign
Corporation; ANNE BRANDON,
an individual; LAMONDE
RUSSELL, an individual; and
fictitious defendants, et al, etc.,

Defendants.

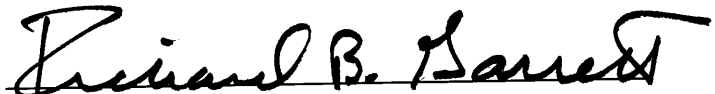
DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

CV 2:06cv127-MHT

MOTION TO DISMISS LAMONDE RUSSELL

Without waiving any other defense he may have to this lawsuit, Defendant Lamonde Russell moves to dismiss the Plaintiff's Complaint, under Rule 12(b)(6) of the Federal Rules of Civil Procedure, for failure to state a claim upon which relief can be granted. In support of this motion, Defendant Russell states that he has been fraudulently joined to this action, and incorporates the legal arguments, citations, and exhibits in Merck & Co., Inc.'s Notice of Removal dated February 9, 2006.

Respectfully submitted, this the 9th day of February, 2006.


Richard B. Garrett

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Mike Brock

Bar Number: (ASB-5280-B61R)

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing upon:

Andy D. Birchfield, Jr., Esquire
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by placing same in the United States mail, postage prepaid, this the 9th day of
February, 2006.


Of Counsel